IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:07/10/2004

CORAM

THE HONOURABLE MR.JUSTICE A.K.RAJAN

Writ Petition No.19459 of 1997

P.Arunachalakani Petitioner

-Vs-

1.The State of Tamil Nadu
rep. by its Secretary
Adi Dravidar Welfare Development
Fort St. George, Chennai 600 009.

2.The District Collector
Theni District
Theni

3.The Special Tahsildar
Adi Dravidar Welfare
(Land Acquisition)
Periyakulam Respondents

Prayer: Petition filed under Article 226 of the Constitution of
India, praying to issue a writ of Certiorarified Mandamus, to call for
the records relating to Form I issued in Na.Ka.2555/97A dated 09.10.199
7 by the Special Tahsildar, Adi Dravidar Welfare (Land Acquisition), Periyakulam the third
respondent herein quash the same
consequently forbear the respondents herein from in any manner proceeding
further with the acquisition of the petitioner's lands covered in S.Nos.3
42/1, 342/2, 342/3, 342/4, 342/5, 341/2A1B, 341/2A1C of Thenkarai
Village, Periakulam Taluk.

For Petitioner : K.Rajkumar

For Respondents : M.Hidayathulla
Government Advocate

:ORDER

This writ petition has been filed for the issuance of a writ of
Certiorarified Mandamus, to call for the records relating to Form I issued in

Na.Ka.2555/97A dated 09.10.1997 by the Special Tahsildar, Adi Dravidar Welfare (Land Acquisition), Periyakulam the third respondent herein quash the same and consequently forbear the respondents herein from in any manner proceeding further with the acquisition of the petitioner's lands covered in S.Nos.342/1, 342/2, 342/3, 342/4, 342/5, 341/2A1B, 341/2A1C of Thenkarai Village, Periakulam Taluk.

2. The point for consideration in this writ petition is that whether the property has been acquired for the Housing Scheme for the Harijan Welfare.

3. According to Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act 1978, "where a District Collector is satisfied that for the purpose of any Harijan Welfare Scheme, it is necessary to acquire any land, he may acquire the land by publishing in the District Gazette a notice to the effect that he has decided to acquire the land in pursuance of this section."

Subsection 2 of Section 4 provides, " Before publishing a notice under sub-section (1), the District Collector or any officer authorised by the District Collector in this behalf, shall call upon the owner or any other person, who, in the opinion of the District Collector or the Officer so authorised may be interested in such lands, to show cause why it should not be acquired."

4. It has been specifically averred in the affidavit filed in the writ petition, the District Collector has not passed any order himself or he has not authorised the land Acquisition Officer under Section 4(2) to take proceedings.
To that counter has been filed by the respondents in Paragraph-22 as follows: "The decision to acquire the lands has been taken only by the LAO who the authorised Officer in this case."

5. It is silent with respect to the authorisation given to LAO by the District Collector, when there is a specific point raised by the petitioner in the writ petition that the District Collector had not authorised the LAO to initiate proceedings to acquire the land. The counter is also silent as to the authorisation given by the District Collector to LAO. It unless says the order is authenticated, authenticated does not mean authorisation. Therefore, the ground raised in the affidavit has not been denied by the respondents. Therefore, it has to be presumed that there is no authorisation given by the Collector to the Land Acquisition Officer.

6. Under the circumstances, there is a specific violation of the safeguard provided under Section 4(2) of the Tamil Nadu Land Acquisiton Act. Inasmuch as there is a violation of the mandatory provision of Section 4(2) of the Act, the notice issued by the Special Tahsildar, third respondent herein is not legal and va lid and hence the entire proceedings is vitiated. The writ petition is allowed as prayed for. NO costs.

Index:yes

Internet:yes

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To

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